

HOUSE COMMITTEE ON JUDICIARY

Agenda

Meeting No. 17

DATE:	Wednesday, March 8, 2006
TIME:	12:00 PM
PLACE:	Room 129 Annex

1. Call to order and roll call.
2. **HB 4, AN ACT relating to consumer protection. R. Webb, L. Clark, D. Pasley**

Create a new section of KRS Chapter 367 to define "agency," "business," "consumer," "consumer reporting agency," "consumer report," "disposal," "encrypt," "person," "personal information," "proper identification," "records," "redact," "security breach," and "security freeze"; create a new section of KRS Chapter 367 to prohibit a business from making or requiring certain uses of a consumer's Social Security number; allow certain exceptions for use or disclosure of a consumer's Social Security number; require a business to make reasonable efforts to implement requirements prior to effective date; delay the effective date of this section to July 1, 2007, and declare that a violation is an unfair, false, misleading or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170 subject to same remedies, duties, powers and penalties as a violation of KRS 367.170; create a new section of KRS Chapter 367 to establish a procedure to allow a consumer to place a security freeze on his or her credit report requiring the consumer's authorization for release of his report by a consumer credit reporting agency; require the consumer reporting agency to honor a security freeze placed by another consumer reporting agency; require a consumer reporting agency to provide the consumer with a personal identification number or password to be used by the consumer to access his or her credit file while the security freeze is in effect; provide for a procedure to permit the consumer to temporarily lift or remove the security freeze; require a security freeze to remain in effect until the consumer requests that the freeze be removed, unless the consumer has materially misrepresented facts in placing the freeze; allow an application for credit to be treated as incomplete if the third party cannot get access to a consumer report because of a freeze; prohibit a consumer reporting agency from suggesting that a security freeze reflects negatively on the consumer report; permit a consumer reporting agency to impose a fee of up to five dollars in certain instances; prohibit any fee if the consumer is a victim of identity theft and has a valid police report or has received a notice of security breach and provides a copy of the notice; require a consumer reporting agency to disclose to consumers the process for removing or temporarily lifting a freeze and to

provide a notice; prohibit application of a security freeze to consumer reports provided to certain entities; require a consumer reporting agency to notify a consumer after changing certain identifying data in the consumer's file; require a consumer reporting agency to provide notice to a consumer if it releases a consumer report in violation of the freeze; declare that a violation is an unfair, false, misleading or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170 subject to same remedies, duties, powers and penalties as a violation of KRS 367.170; create a new section of KRS Chapter 367 to require an agency or business that conducts business in the Commonwealth to take certain measures to protect against unauthorized access or use of personal information during its disposal; provide certain exceptions; declare that a violation is an unfair, false, misleading or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170 subject to same remedies, duties, powers and penalties as a violation of KRS 367.170; create a new section of KRS Chapter 367 to require an agency or business that conducts business in the Commonwealth, and that owns or maintains data that includes personal information, to disclose any security breach to any resident of the Commonwealth whose personal information was acquired or accessed; require an agency or business that does not own the data to notify the owner or licensee of the information in the event of a security breach of the information; provide a procedure for delay of the notice for law enforcement purposes; require certain information to be included in the notice; provide certain exceptions; provide that a waiver is void and unenforceable; require that the notice be given to the Attorney General and consumer reporting agencies if the notice is given to more than 1,000 residents of the Commonwealth; require the notice provider to cooperate with requests to verify the authenticity of the notice; declare that a violation is an unfair, false, misleading or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170 subject to same remedies, duties, powers and penalties as a violation of KRS 367.170; create a new section of KRS Chapter 367 to require an agency or business that conducts business in the Commonwealth to take certain measures to safeguard against security breaches; provide certain exceptions; declare that a violation is an unfair, false, misleading or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170 subject to same remedies, duties, powers and penalties as a violation of KRS 367.170; create a new section of KRS Chapter 367 to declare that the provisions regarding business use of Social Security numbers, security freezes, disposal of records, security breach notices, and safeguarding against security breaches do not limit agency power to enforce criminal or civil statutes or the right of any person to bring civil actions and are not a waiver of sovereign immunity; declare that no liability accrues to an agency for violations; provide venue for civil actions brought by the Attorney General regarding violations; create a new section of KRS Chapter 17 to require a law enforcement agency where jurisdiction may lie for investigation and prosecution of certain identity-theft-related crimes to take a complaint and provide a copy of the police report to the complainant; create a new section of KRS Chapter 411 to establish an expedited procedure for victim of certain identity-theft-related crimes to petition the District Court for a determination that he or she is a victim of identity theft; require that the court filing fee will be the same as for filing a small claims case; provide that it is a Class D Felony to knowingly provide false information in connection with this proceeding; create a new section of KRS Chapter 431 to establish an expedited procedure allowing a person who has been charged with a crime because another person used his or her identifying

information, and who has been found not guilty or the charges have been dismissed, to make a motion to the District or Circuit Court to redact his or her identifying information from certain records; establish a procedure restricting access and inspection of those records; create a new section of KRS Chapter 12 to create definitions; prohibit an agency from making or requiring certain uses of a person's Social Security number or identifying information; prohibit an agency from collecting a Social Security number unless authorized by law or necessary for the agency's duties; require an agency to segregate Social Security numbers from the rest of a record and to provide a person with a written statement of the purpose for collecting and using the Social Security number; allow certain exceptions; prohibit the inclusion of a person's identifying information in documents filed or recorded with an agency subject to certain exceptions; establish a procedure for a person to request redaction of his or her identifying information from official records placed on an agency's Internet Web site unless the agency is required or authorized by law to include the information on the Web site; allow a petition to Franklin Circuit Court to direct compliance; provide for no liability for agency actions related to this section; provide for no waiver of sovereign immunity; delay the effective date of this section to July 1, 2007; amend KRS 15.334 to require that the law enforcement basic training course provided by the Kentucky Law Enforcement Council also include identity theft and disclosure of information from a financial information repository; amend KRS 411.210 to extend the civil cause of action for victims of identity-theft-related crimes to victims of the provisions regarding business use of Social Security numbers, security freezes, disposal of records, security breach notices, and safeguarding against security breaches; extend the statute of limitations to the later of five years or the date of discovery of the identity of the perpetrator of the violation; amend KRS 514.160 to provide that the crime of theft of identity applies to use of a live or deceased person's identity; increase the types of identifying information protected; provide that a purpose of the crime also includes avoiding investigation or prosecution for a crime; increase the penalty for subsequent offenses; delete the exclusion of credit or debit card fraud crimes; amend KRS 525.080 to provide that the crime of harassing communications applies whether the perpetrator is using the perpetrator's own or another person's identity; certain sections effective July 1, 2007.

3. HB 292, AN ACT relating to civil actions. G. Lindsay

Amend KRS 413.140 and KRS 454.050 to delete obsolete references to the abolished tort of breach of promise to marry.

4. HB 406, AN ACT relating to advertisements for adult oriented businesses aired on local cable television channels. J. Vincent, L. Napier

Create a new section of KRS Chapter 231 to prohibit ads for adult oriented businesses on local cable television channels between 6. a.m. and 10 p.m.

5. HB 492, AN ACT relating to Christmas. J. Vincent, T. Burch, J. Gray, M. Harmon, J. Reinhardt, A. Wuchner

Create a new section of KRS Chapter 411 to make businesses immune from civil liability for exhibiting Christmas displays except for malfunctions of the display causing injury; amend KRS 344.040 to make it unlawful for an employer to discharge an employee for saying "Merry Christmas"; amend KRS 341.370 to specify that "discharge for misconduct" does not include saying "Merry Christmas."

6. HB 543, AN ACT relating to consumer protection. R. Adkins

Create a new section of KRS Chapter 367 to prohibit procuring, attempting to procure, soliciting, conspiring, or receiving a telephone record without authorization or by fraudulent, deceptive, or false means; prohibit the selling or attempting to sell a telephone record without authorization; set criminal penalties; exempt law enforcement agencies; exempt telecommunications carriers under certain circumstances; establish that a violation constitutes an unfair or deceptive trade practice; create a civil cause of action with a civil remedy and a statute of limitations; require telecommunications carriers that maintain telephone records to establish procedures to protect such records from unauthorized use.

7. HB 700, AN ACT relating to medical malpractice. R. Wilkey

Amend KRS 304.13-051 to require filing of medical malpractice insurance rates with the Office of Insurance; create new sections of Subtitle 13 of KRS Chapter 304 to prohibit certain components from being included in a medical malpractice rate filing; restrict premiums for medical malpractice policies covering health care providers who deliver one or more babies per year; require the executive director of insurance on or before April 1 of each year to determine if there are any medical specialties in the state which are essential as a matter of public policy and which must be protected from certain adverse actions relating to medical malpractice insurance that may impair the availability of these essential medical specialties to residents of this state; direct the executive director to provide the list of essential medical specialties to each insurer that issues medical malpractice coverage to health care providers practicing in any of the essential medical specialties; require an insurer that intends to cancel, terminate, or otherwise not renew a medical malpractice policy of an essential medical specialist to provide 120 days notice to the health care provider and allow the executive director to delay the insurer's intended action for up to 60 days if the executive director determines a replacement policy is not readily available; require an insurer that intends to cancel, terminate, or otherwise not renew all medical malpractice policies issued to essential medical specialists to provide 120 days notice to the executive director and the health care providers and allow the executive director to delay the insurer's intended action for up to 60 days if the executive director determines replacement policies are not readily available; designate medical specialties until the executive director acts to designate specialties; require the executive director to collect certain information from insurers to make certain an insurer issuing policies of medical malpractice insurance is complying with applicable standards for rates; create a new section of KRS Chapter 454 to provide that in a medical malpractice civil action any statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion or a general sense of benevolence that are made by a health care provider or employee of the health care provider to the alleged victim,

relative of the alleged victim, or representative of the alleged victim that relate to the discomfort, suffering, injury or death of the alleged victim as a result of unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability; create a new section of KRS Chapter 454 to require the plaintiff to file an affidavit of an expert witness as part of a complaint in a civil action alleging professional negligence against a health care provider; require the affidavit to specify at least one negligent act or omission and the factual basis for the claim; require a defendant who disputes liability to file an affidavit of a qualified expert; create a new section of KRS Chapter 454.5 to require that a lawsuit against a health care provider be submitted to mediation to be held within 180 days after all responsive pleadings are filed; create new sections of Subtitle 40 of KRS Chapter 304 to establish the Kentucky Physician's Mutual Insurance Authority to provide medical malpractice insurance to physicians; provide that the authority is a nonprofit, independent, self-supporting de jure municipal corporation and political subdivision of the Commonwealth; provide for a board of directors which shall function in a manner similar to the governing body of a mutual insurance company; direct the board to hire a manager who shall have proven successful experience for a period of at least five years as an executive at the general management level in insurance operations or in the management of a state fund for medical malpractice; establish powers and duties of the manager; require the authority to provide medical malpractice insurance to any physician who pays the premium and complies with any other qualifications and conditions adopted by the authority; require the authority to provide coverage to any physician who is unable to secure coverage in the voluntary market unless the physician owes undisputed premiums to a previous medical malpractice carrier or to a medical malpractice residual market mechanism; direct the authority to establish separate rating plans, rates, and underwriting standards for different classes of risks; require rates to be based only on Kentucky experience; authorize the board to declare an annual dividend and distribute it in the form of premium discounts, dividends, or a combination of discounts and dividends if certain conditions are met; require a quarterly report of assets and liabilities to be provided to the board, the Governor, and the Legislative Research Commission; require the board to file an annual report indicating the business done in the previous year and deliver the report to the Governor, commissioner of the Department of Insurance, Auditor of Public Accounts, Attorney General, and co-chairs of the Legislative Research Commission; prohibit the authority from entering into a contract for an audit unless the Auditor of Public Accounts has turned down a request to perform the audit; provide that if the assets of the authority are less than its liabilities, the board may levy an assessment on its policyholders; require the board to formulate and adopt an investment policy; require the manager to compile and maintain statistical and actuarial data; prohibit the authority from receiving any direct state general fund appropriation; provide that upon request of the board, the Governor and the secretary of the Finance and Administration Cabinet may determine additional initial funding which may include a loan from an existing state agencies not to exceed (\$7,000,000); authorize the issuance of revenue bonds not to exceed (\$40,000,000) upon approval of the secretary of the Finance and Administration Cabinet; provide that the authority may utilize only agents duly and legally licensed and in good standing with the provisions of this chapter; exempt board members, the manager, and any employee from being held personally liable for acts taken in official capacity; require the board, manager, and employees to comply with the Executive Branch Code of Ethics; prohibit the authority

from participating in any plan, pool, association, guarantee, or insolvency fund required by KRS Chapter 304; require the board to comply with the open meetings and open records laws; direct the Attorney General and the Auditor of Public Accounts to monitor operations of the authority and authorize each to make examinations or investigations of the operations, practices, management, and other matters of the authority; require the Attorney General and the Auditor of Public Accounts to report jointly to the General Assembly in January in each even-numbered year in which the General Assembly convenes in a regular session the results of their monitoring activities.

8. HB 723, AN ACT relating to the sale of jointly owned land. B. DeWeese, J. Draud

Amend KRS 389A.030, relating to jointly owned land and partition, to require an appraisal of the property if a sale is ordered; prohibit sale if purchase price does equal or exceed two-thirds of the land's appraised value.

9. HB 747, AN ACT relating to criminal law. R. Webb

Create a new section of KRS Chapter 455 to require that all criminal homicide interrogations be recorded; allow for use of the recording at trial by both the prosecution and defense; establish control over the use of taped interrogations outside court proceedings, create a provision stating that access to recorded interrogations is subject to the limitations of the Kentucky Open Records Act; request Kentucky Supreme Court to create model jury instructions.

10. SB 9/GA, AN ACT relating to dead bodies. G. Tapp

Create a new section of KRS Chapter 213, relating to burials, to authorize an action in the Circuit Court for a family to require the burial or other lawful disposition of the body of the victim when the person alleged to have committed the homicide refuses to permit burial or lawful disposition of the body.

11. SB 93/GA, AN ACT relating to crimes and punishments. T. Buford, W. Blevins Jr, C. Borders, D. Boswell, J. Denton, C. Gibson, B. Guthrie, D. Harper Angel, E. Harris, T. Jensen, D. Kelly, A. Kerr, R. Leeper, V. McGaha, D. Mongiardo, J. Pendleton, J. Rhoads, J. Ridley, R. Roeding, R. Sanders Jr, D. Seum, K. Stine, R. Stivers II, G. Tapp, D. Thayer, E. Tori, J. Westwood, K. Winters

Create a new section of KRS Chapter 525 to establish the crime of disorderly conduct in the first degree when a person engages in disorderly conduct at a funeral, burial, funeral home, funeral procession, or memorial service; establish disorderly conduct in the first degree as a Class A misdemeanor; amend KRS 525.060 to conform; create a new section of KRS Chapter 525 to establish the crime of disrupting meetings and processions in the first degree when a person disrupts a meeting or procession associated with a funeral, burial, or memorial service; amend KRS 525.150 to conform.

12. SB 155/GA, AN ACT relating to telecommunications. R. Stivers II

Amend various sections of KRS Chapter 15 dealing with training and certification of telecommunicators for law enforcement; add requirements for psychological suitability, polygraph and drug screening; make the Kentucky Law Enforcement Council rather than the Justice Cabinet responsible for certification of programs and trainees; telecommunicators not in compliance made subject to termination and being barred from re-employment in similar job for a year.

Discussion Only

13. HB 653, AN ACT relating to criminal background investigations. C. Belcher

Create a new section of KRS 17.110 to 17.180 to define "youth athletics program"; prohibit persons convicted of sex crimes and violent offenders from working or volunteering with youth athletics programs in positions that require direct contact with minors; require criminal background checks for persons in direct contact with minors in youth athletics programs; require fees to be paid by the applicant and cost no more than the investigation; prevent these requirements from applying to other athletics programs that already have specific statutory provisions regarding background checks.

Adjournment

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